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2d Session
HOUSE OF REPRESENTATIVES
REPORT
99-956

EXPORT-IMPORT BANK ACT AMENDMENTS OF 1986

OCTOBER 2, 1986.—Ordered to be printed

Mr. ST GERMAIN, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 5548]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5548) to amend the Export-Import Bank Act of 1945, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 21. POLICY TOWARD UNITED STATES BUSINESS TRANSACTIONS IN ANGOLA.

(a) The Congress finds that—

(1) the Marxist Popular Movement for the Liberation of Angola (hereafter in this section referred to as the "MPLA") has failed to hold fair and free elections since assuming power in Angola in 1975;

(2) Angola currently harbors more than 35,000 Soviet and Cuban troops and advisers;

(3) the Cubans and Soviets have channeled more than $4,000,000,000 in assistance and military aid in furtherance of this intervention in Africa;

(4) the MPLA government of Angola obtains more than 90 percent of its foreign exchange from the extraction and production of oil;

(5) most of Angola's oil is extracted in Cabinda Province, where 75 percent of it is extracted by the Chevron-Gulf Oil Company;

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(6) the MPLA has refused to take meaningful steps to end its dependency on Soviet and Cuban forces, engage in national reconciliation efforts within Angola, or encourage the independence of Namibia; and

(7) United States business interests are in direct conflict with United States foreign policy objectives in aiding the MPLA government of Angola, which directly opposes Jonas Savimbi and UNITA, recipients of United States support.

(b)(1) It is the sense of the Congress that the interests of the United States are best served when United States business transactions conducted in Angola do not directly or indirectly support Cuban troops and Soviet advisers.

(2) The Congress hereby requests that the President consider using his authorities under the Export Administration Act of 1979 to restrict United States business transactions that conflict with United States security interests in Angola.

SEC. 22. OPPOSITION OF MULTILATERAL ASSISTANCE FOR FOREIGN SURPLUS COMMODITIES AND MINERALS.

The Secretary of the Treasury shall instruct the United States Executive Directors of the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the International Monetary Fund, the Asian Development Bank, the Inter-American Investment Corporation, the African Development Bank, and the African Development Fund to use the voice and vote of the United States to oppose any assistance by such institutions, using funds appropriated or otherwise made available pursuant to any provision of law, for the production or extraction of any commodity or mineral for export, if—

(1) such commodity or mineral, as the case may be, is in surplus on world markets; and

(2) the export of such commodity or mineral, as the case may be, would cause substantial injury to the United States producers of the same, similar, or competing commodity or mineral.

And the Senate agree to the same.

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JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5548) to amend the Export-Import Bank Act of 1945, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

H.R. 5548 contains a broad range of provisions intended to improve the competitiveness of the Bank, to ensure that it is aggressive in support of U.S. exports and to provide new tools for Bank support.

Section 2 of H.R. 5548 permits the Bank to charge reasonable fees to ensure that the Bank's marketing efforts are not limited by budgetary constraints. Fees may be charged to cover the cost of seminars and publications that are part of the Bank's efforts to market its products. This section establishes a "reasonableness" test for fees intended to limit the Bank to recovery of those additional costs associated with holding a seminar or producing a publication, not to charge fees covering salaries, rent, or other components of the Bank's normal administrative expense budget.

Section 3 is intended to ensure that the Bank remains competitive with foreign export credit agencies in the credit application fees that it charges. The Bank is required to ensure that its fees are competitive with average fees charged by its major foreign competitors and to permit payment of the fee over the life of the loan or at the outset of the loan either by the borrower or the exporter.

Section 4 calls upon the Bank to take steps to improve the competitiveness of and access to its medium-term programs. While the language places few specific requirements on the Bank, it is the intent of Congress that the Bank explore the widest possible range of options for improving its medium-term programs including reduction of the threshold for the size of direct credits.

Section 5 of H.R. 5548 addresses the Bank's "competitiveness mandate." Current law requires the Bank to be fully competitive, but stipulates that "rates, terms and conditions need not be equivalent to those offered by foreign countries, * * *." This would be changed to read: "Rates, terms and conditions need not be identical in all respects to those offered by foreign countries,* * *."

The subsitution of "identical in all respects" for "equivalent" is meant to strengthen the Bank's competitiveness mandate by removing any possible ambiguity in the current language that all of the Bank's programs are to be fully competitive. "Need not be equivalent" might be read as a relaxation of the competitiveness requirement; the new language requires that the Bank be fully competitive without qualification, but with the understanding that

each individual rate, term and condition of an offer need not be identical to that of a foreign financing offer, as long as the financing package as a whole is fully competitive.

Section 6 directs the Bank to offer multiple-exporter risk protection coverage through creditworthy trade associations, cooperatives and the like. While directing the Bank to provide this type of coverage, the Congress does not intend to create a new entitlement program. The section states that: "Nothing in this provision shall be interpreted as limiting the Bank's authority to deny support for specific transactions or to disapprove a request by such an organization to participate in such coverage." The Bank will, therefore, continue to make its normal determinations about the credit-risk of individual transactions or issuance of insurance policies.

Section 7 is intended to broaden access to the Bank's programs by ensuring that an entity is not denied access solely because that entity is not a bank or is not a U.S. person. This provision ensures that if a foreign bank or a creditworthy non-bank financial entity wishes to finance U.S. exports, the Bank should be prepared to support that effort. At the same time, this is not an effort to limit the Bank's flexibility in determining access to its programs based on other criteria or to restructure them in any way. Thus, the Bank would still be able to establish rules for access to its programs as part of the process of implementing the mandates contained in its statutory charter, such as finding reasonable assurance of repayment and avoiding competition with private capital. The Bank would also be able to establish guidelines for access that permit it to administer its programs in an effective and efficient manner.

Section 8 prohibits Bank support for exports to Marxist-Leninist countries. It defines Marxist-Leninist; lists countries currently falling within that definition; and provides the President authority to determine whether a country should be removed from or added to the list. This provision does not affect the portion of current law providing a national interest waiver where the President determines that extension of credit to a proscribed country is in the national interest. Since the existing waiver authority is retained, for any country for which a general national interest determination has already been made prior to enactment of this bill, the legislation would not require the making of a new general national interest determination.

Section 9 places an explicit prohibition on financing for Angola, unless the President certifies that "no combatant forces or military advisors of the Republic of Cuba or of any other Marxist-Leninist country remain" there. Under this language, military attaches, guards or other military personnel normally assigned to embassies and not involved directly or indirectly in combat or combat preparations would not be part of the certification. The prohibition does not apply to food or agricultural commodities, nor does it apply to past commitments by the Bank. This prohibition is not subject to the national interest waiver provision contained in Section 8 of this legislation and discussed in the preceding paragraph.

Section 10 authorizes "unrestricted" transferability of medium term and long-term obligations insured or guaranteed by the Bank This change in the Bank charter represents a significant step in attracting capital in support of U.S. exports by making these obliga

tions highly liquid assets and encouraging the development of a secondary market in such assets. Section 10 also makes clear that transferability would apply only to guarantee and insurance transactions receiving final approval from the Bank after the date of enactment of the bill.

In combination with the language of Section 7, Section 10 directs the Bank to permit transfers by and to the widest range of potential capital sources without affecting or limiting in any way the Bank's guarantee or insurance. There should be no confusion that the langauge permitting transfer from "the originating lenders or their transferees to other lenders" is intended to limit transferability in any way. In this formulation, the term "other lenders" is not to be narrowly construed to mean simply another bank or a financial institution that normally makes export loans. Since the asset in question is a loan—a loan made by the original lender and guaranteed or insured by the Bank—any person or entity acquiring undiluted ownership of that asset should be deemed to be a "lender" under the language of this provision. This could include, but would not be limited to, non-commercial bank lenders such as pension funds, savings and loan associations, insurance companies and commercial credit or finance corporations, both foreign and domestic. The purpose of this provision is to permit the original lender to sell or transfer the loan to the widest possible range of potential capital sources.

Sections 11 and 12 add to the list of requirements in the charter that the Bank carefully consider the impact of its credit support on U.S. producers, parties, or persons that may be adversely affected by a foreign competitor aided by the sale. The Bank must assess this impact in writing and prepare documentation incorporating that assessment for the consideration of the Bank Board with regard to such sale. In making its determination on extension of Bank credit, the Board shall be guided by its determination that the overall benefits to U.S. industry and employment of proceeding with the sale outweigh the injury to U.S. producers of the same, similar or competing commodity.

Section 13 authorizes appropriation of $145 million in FY 1987 to cover the subsidy cost of new direct loans, as a permanent addition to Bank capital. This amount is intended to represent the subsidy cost of a $1.8 billion direct loan program, the level of direct credit support requested by the Administration for FY 1987.

Section 15 provides guidance on matching foreign official export credits in the United States. Under Section 1912 of the Export-Import Bank Amendments of 1978, Eximbank is permitted to offer financing support to U.S. suppliers who would otherwise lose sales in the U.S. market as a result of credit subsidies from other governments to support sales by foreign producers. The intent of Congress in this provision was to provide a strong and effective deterrent to foreign producers seeking to penetrate the U.S. market through predacious export financing. Since this use of Bank authority involved broad issues of U.S. economic and export policy, the Secretary of the Treasury was granted a role in the consideration of these deals.

The language of H.R. 5548 makes clear that this provision extends to credits "irrespective of whether these credits are being of-

fered by governments which are signatories" to OECD export financing agreements. In addition, this provision imposes a burden on the Treasury to approve domestic financing *unless* the Secretary determines that financing is *not* a significant factor.

Section 19 of H.R. 5548 establishes within the Export-Import Bank a Tied Aid Credit War Chest. This War Chest is intended to provide the U.S. Government with the tools necessary to eliminate the trade-distorting practice of mixing foreign aid with export credit, and appropriation of $300 million is authorized for this purpose. The Administration is anxious to have this provision enacted to support its negotiating efforts in the OECD.

The structure and purpose of the War Chest have been carefully designed. It could be used for both "offensive" and "defensive" purposes; that is, it could be used aggressively to take markets away from other countries, and defensively to protect American exports facing unfair mixed credits financing. Its overriding purpose is to strengthen the hand of the Secretary of the Treasury in negotiating a comprehensive agreement to limit the use of mixed credits.

To serve that purpose, it is essential that the Secretary, who is in charge of these negotiations for the United States, play a role in the use of the funds from the War Chest. Thus, though the War Chest is lodged administratively in the Bank, the Secretary's role is assured by the language in this section that requires the Bank to administer this tied aid credit program "in consultation with the Secretary of the Treasury and in accordance with the Secretary's recommendations on how such credits could be used most effectively and efficiently to promote the negotiation of a comprehensive international arrangement restricting the use of tied aid and partially untied aid credits for commercial purposes."

Section 20 of the bill authorizes the Bank to make interest subsidy payments, the so-called I-Match program, under certain conditions. Under this section, the Bank is permitted to make interest subsidy payments to private lenders to subsidize export loans when below-market financing is required to compete with foreign subsidized financing. This I-Match authority, which is to be granted for two years, can become effective only if three conditions are met: first, the funds for the interest subsidy payments must be appropriated; second, loan guarantees accompanying these payments must not be scored as budget authority; and third, the Bank must have been authorized a direct loan budget of at least $700 million.

This last condition does not mean that the Bank must actually have loaned $700 million before I-Match becomes available, but that I-Match authority can become effective in any fiscal year only if the Bank has been provided sufficient authority in the budget to make at least $700 million of direct loans. This last requirement also reflects Congressional concern that even with a functioning I-Match, the direct credit program will still be needed.

POLICY TOWARD UNITED STATES BUSINESS TRANSACTIONS IN ANGOLA

The Senate provision finds that the Angolan government's refusal to hold free elections and the continued strong Cuban and Soviet military presence in Angola render United States business interests in Angola in direct conflict with United States foreign policy

objectives. It requests that the President use powers under the International Emergency Economic Powers Act to block U.S. business transactions which conflict with U.S. security interests in Angola.

The House has no comparable provision.

The House recedes to the Senate with an amendment striking paragraph (a)(8), and requesting the President to consider using his powers under the Export Administration Act of 1979 to restrict U.S. business transactions that conflict with United States security interests in Angola, rather than using his powers under the International Emergency Economic Powers Act.

GROUP ELIGIBILITY REQUIREMENTS

The Senate provision amends the Trade Act of 1974 to extend the group eligibility requirements for certification by the Secretary of Labor for adjustment assistance for workers to provide relief for workers in the oil and gas industry.

The House has no comparable provision.

The Senate recedes to the House.

OPPOSITION OF MULTILATERAL ASSISTANCE FOR FOREIGN SURPLUS COMMODITIES AND MINERALS

The Senate provision requires the Secretary of the Treasury to instruct the U.S. Executive Directors to the multilateral development banks to oppose making available funds for the production or extraction of any commodity or mineral for export if it is in surplus in world markets and would substantially injure U.S. producers of the same or competing commodity or mineral, and would reduce payments to such institutions in proportion to their support for such production or extraction.

The House has no comparable provision.

The House recedes to the Senate with an amendment deleting subsection (b), which reduces U.S. payments to such institutions.

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